

APPEAL NO. 022518
FILED NOVEMBER 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 28, 2002. The hearing officer determined that (1) (employer) was the employer at the time of the injury for purposes of the 1989 Act; and (2) Respondent 1 (claimant) had disability from the compensable injury of _____, beginning March 6, 2002, and continuing through the date of the hearing. The appellant (carrier 1) appeals the disability determination on sufficiency grounds, asserting that the claimant's disability ended on May 14, 2002. The claimant urges affirmance. Respondent 2 (carrier 2) did not file a response. Carrier 1 did not appeal the determination that its insured was the claimant's employer at the time of her injury and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

Carrier 1 attached new evidence to its appeal, which purportedly shows that the claimant's disability ended on May 14, 2002. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We cannot agree with the carrier's assertion that it could not, with the exercise of reasonable diligence, have obtained the office notes from the claimant's treating doctor dated April 2, 2002, May 14, 2002, and June 26, 2002, prior to September 17, 2002. Accordingly, the evidence attached for the first time on appeal does not meet the requirements for newly discovered evidence and no basis exists for remanding the disability issue for the hearing officer to consider those reports.

The hearing officer did not err in determining that the claimant had disability from March 6, 2002, through the date of the hearing. That determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In view of the evidence, we cannot conclude that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Thus, we will not disturb the challenged determination on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

The true corporate name of insurance carrier 2 is **BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez
Appeals Judge